IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16057 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

DAUD H. LODHIYA - Respondent(s)

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Appearance :

MS MONALI H BHATT for Petitioner(s) : 1,
MR KIRTIDEV R DAVE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/10/2005

ORAL JUDGMENT

1. In the present petition, the petitioner-S.T.Corproation has challenged the legality of an award passed by Industrial Tribunal, Rajkot on 12/1/2004. Respondent who was discharging his duties

as a conductor was found to be carrying ticketless passengers when his bus was checked on 18/1/1989. It was found that three passengers were not issued tickets. Fare was collected from them. For this mis-conduct employer imposed a punishment of withholding of three increments with permanent effect by an order dated 19/10/1989. Respondent challenged the punishment before the Industrial Tribunal. Industrial Tribunal observed that there was no dis-honest intention on the part of the respondent in not issuing the tickets. The passengers were not examined, Industrial Tribunal, therefore, found it appropriate to interfere with the quantum of punishment and reduced the same by providing that a punishment of withholding of one increment without future effect be substituted.

2. Award of the Industrial Tribunal cannot be sustained. Petitioner, through validly conducted departmental inquiry, held the charge of not issuing tickets though fare was collected as proved. Such conclusions could not have been interfered with without sufficient material on record. Industrial

Tribunal concluded that there was no case for mis-appropriation and that there was only a case of negligence; is not borne out from record. It is by now well settled that in such cases as long as the reporter is examined, non examination of the passengers would not be fatal. Industrial Tribunal also ignored past history of the respondent wherein he was found guilty of various mis-conducts as many as on 53 occasions. Twice he was dismissed from service, but later on reinstated.

3. In the result, impugned award of the Industrial Tribunal is set aside. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)

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